REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 769 OF 2006

State of U.P. …Appellant

Versus

Chhoteylal …Respondent

JUDGEMENT

R.M. LODHA, J.

The State of Uttar Pradesh is in appeal, by special leave, because the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow reversed the judgment of the trial court and acquitted the respondent.

2. The prosecution case in brief is this: On September 19, 1989 the prosecutrix (name withheld by us) had gone to

relieve herself in the evening. Ram Kali (A-3) followed her on the way. While she was returning and reached near the plot of one Vijai Bahadur, Chhotey Lal (A-1) and Ramdas (A-2) came from behind; A-1 caught hold of her and when she raised alarm, A-1 showed fire-arm to her and gagged her mouth. A-1 along with A-2 and A-3 brought the prosecutrix upto the road. There, A-3 parted company with A-1 and A-2. A-1 and A-2 then took the prosecutrix to Village Sahora. On the night of September 19, 1989, the prosecutrix was kept in the house of Girish and Saroj Pandit in Village Sahora. On the next day i.e., September 20, 1989, in the wee hours, A-1 and A-2 took the prosecutrix in a bus to Shahajahanpur where she was kept in a rented room for few days. During their stay in Shahajahanpur, A-1 allegedly committed forcible intercourse with the prosecutrix. Whenever prosecutrix asked for return to her house, A-1 would gag her mouth and threaten her. In the meanwhile, Rampal – brother of the prosecutrix – made a complaint to the Superintendent of Police, Hardoi on September 28, 1989 that A-1, A-2 and A-3 have kidnapped her sister (prosecutrix) on September 19, 1989. Based on this

complaint, the First Information Report (FIR) was registered on September 30, 1989. The prosecutrix was recovered by the police on October 13, 1989 from Shahabad - Pihani Road near Jalalpur culvert. On that day itself, the prosecutrix was sent for medical examination to the Women Hospital, Hardoi where she was examined by Dr. Shakuntala Reddy. Ram Manohar Misra to whom the investigation of the case was entrusted then took steps for determination of the age of the prosecutrix as advised by the doctor and sent her for X-ray examination.

3. On October 17, 1989, the prosecutrix was produced before the Judicial Magistrate I, Hardoi, where her statement under Section 164 Cr.P.C. was recorded by the Judicial Magistrate.

4. A-1 was arrested on December 2, 1989. On completion of investigation, A-1 was chargesheeted for the offences punishable under Sections 363, 366, 368 and 376 of the Indian Penal Code (IPC); A-2 was chargesheeted under Sections 363, 366 and 368, IPC and A-3 under Sections 363 and 366, IPC.

5. The prosecution in support of its case examined five witnesses, namely, complainant – Rampal (PW-1), prosecutrix (PW-2), Investigating Officer – Ram Manohar Misra (PW-3), Subhash Chandra Misra – Head Constable (PW-4) and Dr. Shakuntala Reddy (PW-5).

6. A-2 had died and the trial abated as against him. The III Additional Sessions Judge, Hardoi vide his judgment dated September 5, 1990 acquitted A-3 as the prosecution was not able to establish any case against her. However, on the basis of the prosecution evidence, the III Additional Sessions Judge held that the prosecutrix was about 17 ½ years of age at the time of occurrence of crime and found A-1 guilty under Sections 363, 366, 368 and 376, IPC and sentenced him to undergo 7 years' rigorous imprisonment under Section 376 IPC and the different sentences for other offences which were ordered to run concurrently.

7. A-1 challenged the judgment passed by the III Additional Sessions Judge, Hardoi before the Allahabad High Court, Lucknow Bench, Lucknow. The High Court vide its judgment dated March 11, 2003 reversed the judgment of the

trial court and acquitted A-1. While acquitting A-1, the High Court gave three reasons, namely; (one) kidnapping took place on September 19, 1989 whereas the report of the occurrence was lodged after ten days and there was no reasonable and plausible explanation as to why the report could not be lodged promptly and why it had been delayed for ten days; (two) according to medical evidence, the prosecutrix was found to be 17 years of age and she could be even of 19 years of age at the time of occurrence and (three) no internal or external injury was found on her body and she was habitual to sexual intercourse. We deem it appropriate to reproduce the entire reasoning of the High Court as it is which reads as follows:

> "It has been submitted by the learned counsel for the appellant that according to the prosecution, alleged kidnapping took place on 19-9-1989 whereas the report of the occurrence was lodged after ten days. There was no reasonable and plausible explanation forthcoming from the side of the prosecution as to why after alleged kidnapping of a minor girl a report could not be lodged promptly and why it has been delayed for ten days. This by itself shows that the report had been lodged after consultation and after due deliberation and the prosecution can be safely looked with doubt. I fully agree with the contention of the learned counsel for the appellant and furthermore, according to medical evidence on

> record, girl in question was found 17 years of age and she could be even 19 years of age at the time of alleged occurrence. No internal or external injury was found on her body and she was used to sexual intercourse. The charge of rape also stands not proved. The learned court below was thus not justified in believing the prosecution theory and convicting the appellant."

8. We are indeed surprised by the casual approach with which the High Court has dealt with the matter. The judgment of the High Court is not only cryptic and perfunctory but it has also not taken into consideration the crucial evidence on record. On flimsy grounds, the accused convicted of a serious crime of kidnapping and rape has been acquitted. There is no application of mind to the evidence of the prosecutrix at all. Having not been benefited by the proper consideration of the evidence by the High Court, we have looked into the entire evidence on record carefully.

9. Section 375 IPC defines rape as follows :

> "S. 375. Rape.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions :—
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> *First.*— Against her will
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> *Secondly.*— Without her consent.
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> *Thirdly.*— With her consent, when her consent has been obtained by

putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly.— With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.— With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.— With or without her consent, when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."

10. Clause Sixthly—'with or without her consent, when she is under sixteen years of age' assumes importance where a victim girl is under sixteen years of age. The prosecutrix is an illiterate and rustic young woman. She does not seem to have had formal education and, therefore, there is no school certificate available on record. In the FIR, the age of the

prosecutrix has been stated to be 13 years. In her statement recorded under Section 164, Cr.P.C., the prosecutrix stated that her age was 13 years. PW-1, who is elder brother of the prosecutrix, in his deposition also stated that the age of the prosecutrix was 13 years at the relevant time. However, the doctor - PW-5 on the basis of her X-ray as well as physical examination opined that the prosecutrix was 17 years of age. The trial court on consideration of the entire evidence recorded a categorical finding that the prosecutrix was about 17 ½ years of age at the time of occurrence. This is what the trial court said:

> "According to the complainant Rampal, PW-2 was aged 13 years at the time of the occurrence, but during the cross-examination, the complainant has stated in para 7 of her cross examination that he was aged about 24 years and PW-2 was younger to him by 8-9 years. Thus, the age of the prosecutrix, according to the statement of the complainant appearing in para 7 of his cross examination, comes to about 15 or 16 years. PW-2, the prosecutrix, gave her age as 13 years at the time of the occurrence. According to the supplementary report, Ext. Ka. 12 on record, prepared by Lady Dr. Shakuntala Reddy, P.W. 5, PW-2 was aged about 17 years. During the cross-examination, Lady Dr. Shakuntala Reddy, P.W. 5, has stated in para 9 of cross-examination that there could be a difference of 6 months both ways

> in the age of PW-2. Thus PW-2 can be said to be aged 17 ½ years at the time of the occurrence."

11. We find ourselves in agreement with the view of the trial court regarding the age of the prosecutrix. The High Court conjectured that the age of the prosecutrix could be even 19 years. This appears to have been done by adding two years to the age opined by PW-5. There is no such rule much less an absolute one that two years have to be added to the age determined by a doctor. We are supported by a 3-Judge Bench decision of this Court in *State of Karnataka* v. *Bantara Sudhakara @ Sudha & Anr.*[1] wherein this Court at page 41 of the Report stated as under:

> "Additionally, merely because the doctor's evidence showed that the victims belong to the age group of 14 to 16, to conclude that the two years' age has to be added to the upper age-limit is without any foundation."

12. Learned counsel for the respondent relied upon a decision of this Court in the case of *Mussauddin Ahmed v. State of Assam*[2] in support of his submission that the best

[1] (2008) 11 SCC 38
[2] (2009) 14 SCC 541

evidence concerning the age of prosecutrix having been withheld, the finding of the High Court that the prosecutrix could be 19 years of age cannot be said to erroneous. In the present case, the brother of the prosecutrix has been examined as PW-1 and, therefore, it cannot be said that best evidence has been withheld. The decision of this Court in *Mussauddin Ahmed* [2] has no application at all. In our view, the High Court fell in grave error in observing that the prosecutrix could be even 19 years of age at the time of alleged occurrence.

13. Be that as it may, in our view, clause Sixthly of Section 375 IPC is not attracted since the prosecutrix has been found to be above 16 years (although below 18 years). In the facts of the case what is crucial to be considered is whether clause First or clause Secondly of Section 375 IPC is attracted. The expressions 'against her will' and 'without her consent' may overlap sometimes but surely the two expressions in clause First and clause Secondly have different connotation and dimension. The expression 'against her will' would ordinarily mean that the intercourse was done by a man with a woman despite her resistance and opposition. On the other

hand, the expression 'without her consent' would comprehend an act of reason accompanied by deliberation. The concept of `consent' in the context of Section 375 IPC has come up for consideration before this Court on more than one occasion. Before we deal with some of these decisions, reference to Section 90 of the IPC may be relevant which reads as under :

> "S. 90. Consent known to be given under fear or misconception.—A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or
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> Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or
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> Consent of child.—unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."

14. This Court in a long line of cases has given wider meaning to the word 'consent' in the context of sexual offences as explained in various judicial dictionaries. In Jowitt's

Dictionary of English Law (Second Edition), Volume 1 (1977) at page 422 the word 'consent' has been explained as an act of reason accompanied with deliberation, the mind weighing, as in a balance, the good or evil on either side. It is further stated that consent supposes three things—a physical power, a mental power, and a free and serious use of them and if consent be obtained by intimidation, force, meditated imposition, circumvention, surprise, or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind.

15. Stroud's Judicial Dictionary (Fourth Edition), Volume 1 (1971) at page 555 explains the expression 'consent', inter alia, as under :-

> "Every 'consent' to an act, involves a submission; but it by no means follows that a mere submission involves consent," e.g. the mere submission of a girl to a carnal assault, she being in the power of a strong man, is not consent (per Coleridge J., R.v. Day, 9 C. & P. 724)."

Stroud's Judicial Dictionary also refers to decision in the case of *Holman v. The Queen* ([1970] W.A.R. 2) wherein it was stated: 'But there does not necessarily have to be complete willingness to constitute consent. A woman's consent to

intercourse may be hesitant, reluctant or grudging, but if she consciously permits it there is “consent”.’

16. In Words and Phrases, Permanent Edition, (Volume 8A) at pages 205-206, few American decisions wherein the word ‘consent’ has been considered and explained with regard to the law of rape have been referred. These are as follows :

> “In order to constitute “rape”, there need not be resistance to the utmost, and a woman who is assaulted need not resist to the point of risking being beaten into insensibility, and, if she resists to the point where further resistance would be useless or until her resistance is overcome by force or violence, submission thereafter is not “consent”. *People v. McIlvain* (55 Cal. App. 2d 322).”
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> “ “Consent,” within Penal Law, § 2010, defining rape, requires exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent. *People v. Pelvino*, 214 N.Y.S. 577”
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> . . . . . .
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> “ “Consenting” as used in the law of rape means consent of the will and submission under the influence of fear or terror cannot amount to real consent. Hallmark v. State, 22 Okl. Cr. 422”
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> . . . .
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> “Will is defined as wish, desire, pleasure, inclination, choice, the faculty of conscious, and especially of deliberate, action. It is purely and

> solely a mental process to be ascertained, in a prosecution for rape, by what the prosecuting witness may have said or done. It being a mental process there is no other manner by which her will can be ascertained, and it must be left to the jury to determine that will by her acts and statements, as disclosed by the evidence. It is but natural, therefore, that in charging the jury upon the subject of rape, or assault with intent to commit rape, the courts should have almost universally, and, in many cases, exclusively, discussed "consent" and resistance. There can be no better evidence of willingness is a condition or state of mind no better evidence of unwillingness than resistance. No lexicographer recognizes "consent" as a synonym of willingness, and it is apparent that they are not synonymous. It is equally apparent, on the other hand, that the true relation between the words is that willingness is a condition or state of mind and "consent" one of the evidences of that condition. Likewise resistance is not a synonym of unwillingness, though it is an evidence thereof. In all cases, therefore, where the prosecuting witness has an intelligent will, the court should charge upon the elements of "consent" and resistance as being proper elements from which the jury may infer either a favourable or an opposing will. It must, however, be recognized in all cases that the real test is whether the assault was committed against the will of the prosecuting witness. *State* v. *Schwab,* 143 N.E. 29"

17. Broadly, this Court has accepted and followed the judgments referred to in the above judicial dictionaries as regards the meaning of the word `consent' as occurring in Section 375 IPC. It is not necessary to refer to all the decisions

and the reference to two decisions of this Court shall suffice. In *State of H.P.* v. *Mango Ram*[3] , a 3-Judge Bench of this Court while dealing with the aspect of 'consent' for the purposes of Section 375 IPC held at page 230 of the Report as under:

> "Submission of the body under the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances."

18. In the case of *Uday* v. *State of Karnataka*[4], this Court put a word of caution that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. The Court at page 57 of the Report stated :

> "…….In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case,

[3] (2000) 7 SCC 224
[4] (2003) 4 SCC 46

> consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact.. . . . ..".

19. In the backdrop of the above legal position, with which we are in respectful agreement, the evidence of the prosecutrix needs to be analysed and examined carefully. But, before we do that, we state, as has been repeatedly stated by this Court, that a woman who is victim of sexual assault is not an accomplice to the crime. Her evidence cannot be tested with suspicion as that of an accomplice. As a matter of fact, the evidence of the prosecutrix is similar to the evidence of an injured complainant or witness. The testimony of prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary. In prosecutions of rape, the law does not require corroboration. The evidence of the prosecutrix may sustain a conviction. It is only by way of abundant caution that court may look for some corroboration so as to satisfy its conscience and rule out any

false accusations. In *State of Maharasthra* v. *Chandraprakash Kewalchand Jain*[5], this Court at page 559 of the Report said:

> "A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have

[5] (1990) 1 SCC 550

> a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."

20. In *State of Punjab* v. *Gurmit Singh & Ors.*[6], this Court made the following weighty observations at pages 394-396 and page 403:

> "The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix.... The courts must, while evaluating evidence remain alive to the fact that in a case of rape, no self- respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.... Seeking corroboration of her statement before replying upon the same as a rule, in such cases, amounts to adding insult to injury.... Corroboration as a condition for judicial reliance on the testimony of

[6] (1996) 2 SCC 384

> the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.
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> The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

21. In *Vijay @ Chinee* v. *State of Madhya Pradesh*[7], decided recently, this Court referred to the above two decisions of this Court in *Chandraprakash Kewalchand Jain*[5] and *Gurmit Singh*[6] and also few other decisions and observed as follows :

> "Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no

[7] (2010) 8 SCC 191

> corroboration. The court may convict the accused on the sole testimony of the prosecutrix.".

22. The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind as rape is the worst form of woman's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules

out the leveling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge. This Court has repeatedly laid down the guidelines as to how the evidence of the prosecutrix in the crime of rape should be evaluated by the court. The observations made in the case of *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat*[8] deserve special mention as, in our view, these must be kept in mind invariably while dealing with a rape case. This Court observed as follows :

> "9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own

[8] (1983) 3 SCC 217

permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical……."

This Court went on to observe at page 225:

"……Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because (*1*) A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (*2*) She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours. (*3*) She would have to brave the whole world. (*4*) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (*5*) If she is unmarried, she would apprehend that it would be

> difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (*6*) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (*7*) The fear of being taunted by others will always haunt her. (*8*) She would feel extremely embarassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo. (*9*) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (*10*) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (*11*) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (*12*) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, acts as a deterrent."

23. We shall now examine the evidence of the prosecutrix. The prosecutrix at the relevant time was less than 18 years of age. She was removed from the lawful custody of her brother in the evening on September 19, 1989. She was taken to a different village by two adult males under threat and kept in a rented room for many days where A-1 had forcible sexual intercourse with her. Whenever she asked A-1 for

return to her village, she was threatened and her mouth was gagged. Although we find that there are certain contradictions and omissions in her testimony, but such omissions and contradictions are minor and on material aspects, her evidence is consistent. The prosecutrix being illiterate and rustic young woman, some contradictions and omissions are natural as her recollection, observance, memory and narration of chain of events may not be precise. Learned counsel for the respondent submitted that no alarm was raised by the prosecutrix at the bus stand or the other places where she was taken and that creates serious doubt about truthfulness of her evidence. This argument of the learned counsel overlooks the situation in which the prosecutrix was placed. She had been kidnapped by two adult males, one of them – A-1 – wielded fire-arm and threatened her and she was taken away from her village. In the circumstances, it made sensible decision not to raise alarm. Any alarm at unknown place might have endangered her life. The absence of alarm by her at the public place cannot lead to an inference that she had willingly accompanied A-1 and A-2. The circumstances made her

submissive victim and that does not mean that she was inclined and willing to intercourse with A-1. She had no free act of the mind during her stay with A-1 as she was under constant fear.

24. We have also examined the evidence of prosecutrix, her brother and the statement of A-1 under Section 313 Cr.P.C. to satisfy ourselves whether there was likelihood of false implication or motive for false accusations. Except the bald statement of A-1 under Section 313 Cr.P.C. that he has been falsely implicated due to enmity, nothing has been brought on record that may probabalise that the prosecutrix had motive to falsely implicate him. The circumstances even do not remotely suggest that the prosecutrix would put her reputation and chastity at stake for the reason stated by A-1 in the statement under Section 313 Cr.P.C. that a case was pending between A-1 and one Sheo Ratan. In our view, the evidence of the prosecutrix is reliable and has rightly been acted upon by the trial court.

25. Although the lady doctor - PW-5 did not find any injury on the external or internal part of body of the prosecutrix and opined that the prosecutrix was habitual to sexual

intercourse, we are afraid that does not make the testimony of the prosecutrix unreliable. The fact of the matter is that the prosecutrix was recovered almost after three weeks. Obviously the sign of forcible intercourse would not persist for that long period. It is wrong to assume that in all cases of intercourse with the women against will or without consent, there would be some injury on the external or internal part of the victim. The prosecutrix has clearly deposed that she was not in a position to put up any struggle as she was taken away from her village by two adult males. The absence of injuries on the person of the prosecutrix is not sufficient to discredit her evidence; she was a helpless victim. She did not and could not inform the neighbours where she was kept due to fear.

26. As regards the belated FIR, suffice it to observe that PW-1 (brother of the prosecutrix) has given plausible explanation. PW-1 deposed that when he returned to his home in the evening from agricultural field, he was informed that her sister (prosecutrix) who had gone to ease herself had not returned. He searched his sister and he was told by the two villagers that her sister was seen with the accused. He

contacted the relatives of the accused for return of his sister. He did not lodge the report immediately as the honour of the family was involved. It was only after few days that when his sister did not return and there was no help from the relatives of the accused that he made the complaint on September 28, 1989 to the Superintendent of Police, Hardoi who marked the complaint to the Circle Officer and the FIR was registered on September 30, 1989. The delay in registration of the FIR is, thus, reasonably explained. The High Court was in grave error in concluding that there was no reasonable and plausible explanation for the belated FIR and that it was lodged after consultation and due deliberation and that creates doubt about the case. Unfortunately, the High Court did not advert to the evidence of PW-1 and the reasoning of the trial court in this regard.

27. The High Court was not at all justified in taking a different view or conclusion from the trial court. The judgment of the High Court is vitiated by non-consideration of the material evidence and relevant factors eloquently emerging from the prosecution evidence. The High Court in a sketchy manner

reversed the judgment of the trial court without discussing the deposition of the witnesses as well as all relevant points which were considered and touched upon by the trial court. We are satisfied that the judgment of the High Court cannot be sustained and has to be set aside.

28. We are not oblivious of the fact that the incident is of 1989; the prosecutrix has married after the incident and A-1 has a family of his own and sending A-1 to jail now may disturb his family life. But none of these factors individually or collectively persuades us for a soft option. Rape is a heinous crime and once it is established against a person charged of the offence, justice must be done to the victim of crime by awarding suitable punishment to the crime doer. We are constrained to observe that criminal justice system is not working in our country as it should. The police reforms have not taken place despite directions of this Court in the case of *Prakash Singh & Ors. vs. Union of India & Ors.*[9]. We do not intend to say anything more in this regard since matter is being dealt with separately by a 3-Judge Bench. The investigators hardly have professional orientation; they do not have modern

[9] (2006) 8 SCC1

tools. On many occasions impartial investigation suffers because of political interference. The criminal trials are protracted because of non-appearance of official witnesses on time and the non-availability of the facilities for recording evidence by video conferencing. The public prosecutors have their limitations; the defence lawyers do not make themselves available and the court would be routinely informed about their pre-occupation with other matters; the courts remain over-burdened with the briefs listed on the day and they do not have adequate infrastructure. The adjournments thus become routine; the casualty is justice. It is imperative that the criminal cases relating to offences against the State, corruption, dowry death, domestic violence, sexual assault, financial fraud and cyber crimes are fast tracked and decided in a fixed time frame, preferably, of three years including the appeal provisions. It is high time that immediate and urgent steps are taken in amending the procedural and other laws to achieve the above objectives. We must remember that a strong and efficient criminal justice system is a guarantee to the rule of law and vibrant civil society.

29. The appeal is, accordingly, allowed and the judgment of acquittal passed by the High Court of Judicature at Allahabad, Lucknow Bench, in Criminal Appeal No. 484 of 1990 is set aside. The judgment passed by the III Additional Sessions Judge, Hardoi is restored. The respondent shall now surrender within two months from today to serve out the remaining sentence as awarded by the trial court.

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…….. J.
(Aftab Alam)

……. J.
(R.M. Lodha)

NEW DELHI,
JANUARY 14 , 2011.